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8
9 **BEFORE THE**
DEPARTMENT OF CONSUMER AFFAIRS
10 **FOR THE BUREAU OF AUTOMOTIVE REPAIR**
STATE OF CALIFORNIA

11
12 In the Matter of the Accusation Against:

Case No. *79/17-3040*

13 **MS AUTO REPAIR; MOHAMMED**
SAHID
14 **501 South Norfolk Street**
San Mateo, CA 94401

A C C U S A T I O N

15 **Automotive Repair Dealer Registration No.**
16 **ARD 223079**

17 **Smog Check Station License No. RC 223079**

18 **and**

19 **ANDY PHONG TRAN**
3326 Coachlight Drive
20 **San Jose, CA 95111**

21 **Smog Check Inspector No. EO 636650**

22
23 Respondent.

24
25 Complainant alleges:

26 **PARTIES**

27 1. Patrick Dorais (Complainant) brings this Accusation solely in his official capacity as
28 the Chief of the Bureau of Automotive Repair, Department of Consumer Affairs.

2. In 2002, the Bureau of Automotive Repair issued Automotive Repair Dealer Registration Number ARD 223079 to Mohammed Sahid, doing business as MS Auto Repair (Respondent MS Auto). The Automotive Repair Dealer Registration was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on July 31, 2018, unless renewed.

3. On or about October 31, 2002, the Bureau of Automotive Repair issued Smog Check Station License Number RC 223079 to MS Auto Repair; Mohammed Sahid (Respondent MS Auto). The Smog Check Station License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on July 31, 2018, unless renewed.

4. On or about March 18, 2014, the Bureau of Automotive Repair issued Smog Check Inspector Number EO 636650 to Andy Phong Tran (Respondent Tran). The Smog Check Inspector License was in full force and effect at all times relevant to the charges brought in this Accusation and will expire on May 31, 2018, unless renewed.

JURISDICTION

5. This Accusation is brought before the Director of the Department of Consumer Affairs (Director) for the Bureau of Automotive Repair, under the authority of the following laws.

6. Business and Professions Code (Code) section 118, subdivision (b), provides that the suspension, expiration, surrender, or cancellation of a license shall not deprive the Board, Registrar, or Director of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

7. Section 9884.13 of the Code provides, in relevant part, that the expiration of a valid registration shall not deprive the director or chief of jurisdiction to proceed with a disciplinary proceeding against an automotive repair dealer or to render a decision invalidating a registration temporarily or permanently.

8. Section 44002 of the Health and Safety Code provides, in relevant part, that the Director has all the powers and authority granted under the Automotive Repair Act for enforcing the Motor Vehicle Inspection Program.

9. Section 44072.6 of the Health and Safety Code provides, in relevant part, that the expiration or suspension of a license by operation of law, or by order or decision of the Director of Consumer Affairs, or a court of law, or the voluntary surrender of the license shall not deprive the Director of jurisdiction to proceed with disciplinary action.

10. Code section 477 provides, in pertinent part, that "Board" includes "bureau," "commission," "committee," "department," "division," "examining committee," "program," and "agency." "License" includes certificate, registration or other means to engage in a business or profession regulated by the code.

STATUTES AND REGULATIONS

11. Section 9884.7 of the Code states, in relevant part:

"(a) The director, where the automotive repair dealer cannot show there was a bona fide error, may deny, suspend, revoke, or place on probation the registration of an automotive repair dealer for any of the following acts or omissions related to the conduct of the business of the automotive repair dealer, which are done by the automotive repair dealer or any automotive technician, employee, partner, officer, or member of the automotive repair dealer.

(1) Making or authorizing in any manner or by any means whatever any statement written or oral which is untrue or misleading, and which is known, or which by the exercise of reasonable care should be known, to be untrue or misleading.

• • •

(4) Any other conduct which constitutes fraud.

• • •

(6) Failure in any material respect to comply with the provisions of this chapter or regulations adopted pursuant to it."

12. Section 9889.22 of the Code states:

"The willful making of any false statement or entry with regard to a material matter in any oath, affidavit, certificate of compliance or noncompliance, or application form which is required by this chapter or Chapter 5 (commencing with Section 44000) of Part 5 of Division 26 of the Health and Safety Code constitutes perjury and is punishable as provided in the Penal Code."

1 13. Section 44012 of the Health and Safety Code states, in relevant part:

2 "The test at the smog check stations shall be performed in accordance with procedures
3 prescribed by the department, pursuant to Section 44013, shall require, at a minimum, loaded
4 mode dynamometer testing in enhanced areas, and two-speed testing in all other program areas,
5 and shall ensure all of the following:

6 ...

7 "(f) A visual or functional check is made of emission control devices specified by the
8 department, including the catalytic converter in those instances in which the department
9 determines it to be necessary to meet the findings of Section 44001. The visual or functional
10 check shall be performed in accordance with procedures prescribed by the department."

11 14. Section 44032 of the Health and Safety Code states, in relevant part:

12 "No person shall perform, for compensation, tests or repairs of emission control devices or
13 systems of motor vehicles required by this chapter unless the person performing the test or repair
14 is a qualified smog check technician and the test or repair is performed at a licensed smog check
15 station. Qualified technicians shall perform tests of emission control devices and systems in
16 accordance with Section 44012."

17 15. Section 44059 of the Health and Safety Code states:

18 "The willful making of any false statement or entry with regard to a material matter in any
19 oath, affidavit, certificate of compliance or noncompliance, or application form which is required
20 by this chapter or Chapter 20.3 (commencing with Section 9880) of Division 3 of the Business
21 and Professions Code, constitutes perjury and is punishable as provided in the Penal Code."

22 16. Health and Safety Code, section 44072.2, states, in relevant part:

23 "The director may suspend, revoke, or take other disciplinary action against a license as
24 provided in this article if the licensee, or any partner, officer, or director thereof, does any of the
25 following:

26 "(a) Violates any section of this chapter [the Motor Vehicle Inspection Program (Health and
27 Saf. Code, § 44000, et seq.)) and the regulations adopted pursuant to it, which related to the
28 licensed activities.

1 ...

2 "(d) Commits any act involving dishonesty, fraud, or deceit whereby another is injured."

3 17. California Code of Regulations, title 16, section 3340.35, states:

4 "(a) A licensed station shall purchase certificates of compliance and noncompliance from
5 the bureau or an authorized agent of the bureau only, and under the following terms and
6 conditions:

7 "(1) A certificate of compliance or noncompliance shall be purchased by a licensed station
8 for a fee determined pursuant to section 3340.35.1 of these regulations; and

9 "(2) Full payment is required at the time the certificates are ordered.

10 "(b) A licensed station shall not sell or otherwise transfer unused certificates to another
11 licensed station, to a new owner of the business, or to any person other than a customer whose
12 vehicle has been inspected in accordance with the procedures specified in section 3340.42 of this
13 article.

14 "(c) A licensed station shall issue a certificate of compliance or noncompliance to the
15 owner or operator of any vehicle that has been inspected in accordance with the procedures
16 specified in section 3340.42 of this article and has all the required emission control equipment
17 and devices installed and functioning correctly. The following conditions shall apply:

18 "(1) Customers shall be charged the same price for certificates as that paid by the licensed
19 station; and

20 "(2) Sales tax shall not be assessed on the price of certificates.

21 "(d) No person shall sell, issue, cause or permit to be issued any certificate purported to be
22 a valid certificate of compliance or noncompliance unless duly licensed to do so.

23 "(e) A repair cost waiver or an economic hardship extension shall be the same fee as a
24 certificate of compliance or noncompliance."

25 18. California Code of Regulations, title 16, section 3340.41, states:

26 "(a) A licensed station shall give a copy of the test report printed from the emissions
27 inspection system to the customer. The report shall be attached to the customer's invoice.

1 "(b) No person shall enter into the emissions inspection system any access or qualification
2 number other than as authorized by the bureau, nor in any way tamper with the emissions
3 inspection system.

4 "(c) No person shall enter into the emissions inspection system any vehicle identification
5 information or emission control system identification data for any vehicle other than the one being
6 tested. Nor shall any person knowingly enter into the emissions inspection system any false
7 information about the vehicle being tested.

8 "(d) The specifications and procedures required by Section 44016 of the Health and Safety
9 Code shall be the vehicle manufacturer's recommended procedures for emission problem
10 diagnosis and repair or the emission diagnosis and repair procedures found in industry-standard
11 reference manuals and periodicals published by nationally recognized repair information
12 providers. Smog check stations and smog check technicians shall, at a minimum, follow the
13 applicable specifications and procedures when diagnosing defects or performing repairs for
14 vehicles that fail a smog check test.

15 "(e) A smog check station shall not perform an initial test, except for an official pre-test, on
16 or issue a certificate of compliance to any vehicle that has been directed to a test-only station for
17 its biennial smog check pursuant to Sections 44010.5 or 44014.7 of the Health and Safety Code,
18 unless the station is licensed as a test-only station pursuant to subdivision (b) of Section 44014 of
19 the Health and Safety Code. The reinspection and certification of a test-only directed vehicle that
20 has failed an initial test at a test-only station and has undergone subsequent repairs to correct the
21 cause of the failure, may be performed by a test-only station, or by a test-and- repair station that
22 performs those repairs and that is also certified as a Gold Shield station pursuant to Section
23 44014.2 of the Health and Safety Code and Article 10 (commencing with section 3392.1) of this
24 chapter.

25 19. California Code of Regulations, title 16, section 3340.42, states:

26 "Smog check inspection methods are prescribed in the Smog Check Manual, referenced by
27 section 3340.45.
28

1 “(a) All vehicles subject to a smog check inspection, shall receive one of the following test
2 methods:

3 “(1) A loaded-mode test shall be the test method used to inspect 1976 - 1999 model-year
4 vehicle, except diesel-powered, registered in the enhanced program areas of the state. The
5 loaded-mode test shall measure hydrocarbon, carbon monoxide, carbon dioxide and oxides of
6 nitrogen emissions, as contained in the bureau's specifications referenced in subsection (a) of
7 Section 3340.17 of this article. The loaded-mode test shall use Acceleration Simulation Mode
8 (ASM) test equipment, including a chassis dynamometer, certified by the bureau.

9 “On and after March 31, 2010, exhaust emissions from a vehicle subject to this inspection
10 shall be measured and compared to the emissions standards shown in the Vehicle Look-up Table
11 (VLT) Row Specific Emissions Standards (Cutpoints) Table, dated March 2010, which is hereby
12 incorporated by reference. If the emissions standards for a specific vehicle are not included in this
13 table then the exhaust emissions shall be compared to the emissions standards set forth in TABLE
14 I or TABLE II, as applicable. A vehicle passes the loaded-mode test if all of its measured
15 emissions are less than or equal to the applicable emission standards specified in the applicable
16 table.

17 “(2) A two-speed idle mode test shall be the test method used to inspect 1976 - 1999 model-
18 year vehicles, except diesel-powered, registered in all program areas of the state, except in those
19 areas of the state where the enhanced program has been implemented. The two-speed idle mode
20 test shall measure hydrocarbon, carbon monoxide and carbon dioxide emissions at high RPM and
21 again at idle RPM, as contained in the bureau's specifications referenced in subsection (a) of
22 Section 3340.17 of this article. Exhaust emissions from a vehicle subject to this inspection shall
23 be measured and compared to the emission standards set forth in this section and as shown in
24 TABLE III. A vehicle passes the two-speed idle mode test if all of its measured emissions are
25 less than or equal to the applicable emissions standards specified in Table III.

26 “(3) An OBD-focused test, shall be the test method used to inspect gasoline-powered
27 vehicles 2000 model-year and newer, and diesel-powered vehicles 1998 model-year and newer.
28 The OBD test failure criteria are specified in section 3340.42.2.

1 “(b) In addition to subsection (a), all vehicles subject to the smog check program shall
2 receive the following:

3 “(1) A visual inspection of emission control components and systems to verify the vehicle's
4 emission control systems are properly installed.

5 “(2) A functional inspection of emission control systems as specified in the Smog Check
6 Manual, referenced by section 3340.45, which may include an OBD test; to verify their proper
7 operation.

8 “(c) The bureau may require any combination of the inspection methods in sections (a) and
9 (b) under any of the following circumstances:

10 “(1) Vehicles that the department randomly selects pursuant to Health and Safety Code
11 section 44014.7 as a means of identifying potential operational problems with vehicle OBD
12 systems.

13 “(2) Vehicles identified by the bureau as being operationally or physically incompatible
14 with inspection equipment.

15 “(3) Vehicles with OBD systems that have demonstrated operational problems.

16 “(d) Pursuant to section 39032.5 of the Health and Safety Code, gross polluter standards are
17 as follows:

18 “(1) A gross polluter means a vehicle with excess hydrocarbon, carbon monoxide, or oxides
19 of nitrogen emissions pursuant to the gross polluter emissions standards included in the tables
20 described in subsection (a), as applicable.

21 “(2) Vehicles with emission levels exceeding the emission standards for gross polluters
22 during an initial inspection will be considered gross polluters and the provisions pertaining to
23 gross polluting vehicles will apply, including, but not limited to, sections 44014.5, 44015, and
24 44081 of the Health and Safety Code.

25 “(3) A gross polluting vehicle shall not be passed or issued a certificate of compliance until
26 the vehicle's emissions are reduced to or below the applicable emissions standards for the vehicle
27 included in the tables described in subsection (a), as applicable. However, the provisions
28 described in section 44017 of the Health and Safety Code may apply.

1 “(4) This subsection applies in all program areas statewide to vehicles requiring inspection
2 pursuant to sections 44005 and 44011 of the Health and Safety Code.”

3 20. California Code of Regulations, title 16, section 3371, states:

4 “No dealer shall publish, utter, or make or cause to be published, uttered, or made any false
5 or misleading statement or advertisement which is known to be false or misleading, or which by
6 the exercise of reasonable care should be known to be false or misleading. Advertisements and
7 advertising signs shall clearly show the following:

8 “(a) Firm Name and Address. The dealer's firm name and address as they appear on the
9 State registration certificate as an automotive repair dealer; and

10 “(b) Telephone Number. If a telephone number appears in an advertisement or on an
11 advertising sign, this number shall be the same number as that listed for the dealer's firm name
12 and address in the telephone directory, or in the telephone company records if such number is
13 assigned to the dealer subsequent to the publication of such telephone directory.”

14 21. California Code of Regulations, title 16, section 3373, states:

15 “No automotive repair dealer or individual in charge shall, in filling out an estimate,
16 invoice, or work order, or record required to be maintained by section 3340.15(f) of this chapter,
17 withhold therefrom or insert therein any statement or information which will cause any such
18 document to be false or misleading, or where the tendency or effect thereby would be to mislead
19 or deceive customers, prospective customers, or the public.”

20 COST RECOVERY

21 22. Section 125.3 of the Code provides, in relevant part, that the Board may request the
22 administrative law judge to direct a licentiate found to have committed a violation or violations of
23 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
24 enforcement of the case, with failure of the licentiate to comply subjecting the license to not being
25 renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be
26 included in a stipulated settlement.

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FACTUAL ALLEGATIONS

23. In 2017, Bureau representative Fidel Reyes (Reyes) reviewed the OIS Data for vehicles inspected by Respondent Tran using the BAR-OIS at MS Auto Repair between February 22, 2017, and March 8, 2017. During Reyes's investigation, he accessed the Vehicle Information Database (VID), and performed a focused review of BAR-OIS test data for MS Auto Repair. BAR-OIS test data is the OBD information transmitted during a smog inspection from the computer of the vehicle being inspected to the BAR-OIS. Beginning March 9, 2015, California's Smog Check Program was updated and now requires smog inspectors and stations to use the BAR-OIS computer system during smog inspections, for most model year 2000 and newer gasoline and hybrid vehicles, and most 1998 and newer diesel vehicles. The BAR-OIS consists of a BAR-certified Data Acquisition Device (DAD), computer, bar code scanner, and printer. The DAD serves as an on-board diagnostic (OBD) scan tool. The DAD is an interface box that connects the computer containing the BAR-OIS software to the diagnostic link connector (DLC) of the vehicle being inspected. When requested by the BAR-OIS software, the DAD retrieves data from the vehicle's on-board computer system (OBD II).

24. The information obtained by the BAR-OIS software during a smog inspection is organized in a detailed inspection report for each vehicle inspected and is known as a BAR-OIS Test Detail. The BAR-OIS Test Detail contains information segregated into eight different blocks titled as follows: Station, Vehicle, Test Status, Visual Details, Functional Details, OBDII Details, OBDII Readiness Monitor Status, and OBDII DTC Details. For the purposes of Reyes's investigation of Respondent MS Auto, he focused on information in the "Vehicle" and "OBDII Details" blocks because they contain a unique combination of information for the vehicle being inspected and "like vehicles" inspected. Like vehicles are vehicles of the same manufacturer, model, and model year that were inspected on the BAR-OIS. The unique combination of information analyzed by Reyes includes the eVIN, PID count, and protocol. Reyes compared the eVIN, communication protocol, and PID count for a vehicle that was certified to like vehicles.

25. Reyes identified twelve vehicles certified by Respondents MS Auto and Tran between approximately February 22, 2017, and March 8, 2017, that failed to transmit the expected

1 eVIN, protocol, and PID count. The data transmitted during Respondent Tran's inspections either
2 differed from the OIS data the vehicles transmitted during other inspections, or the data was
3 inconsistent with the OIS data transmitted by "like vehicles" inspected, or both.

4 26. The OIS Data transmitted by the vehicles during the other inspections was
5 consistent with the OIS Data transmitted by like vehicles inspected. The OIS Data transmitted by
6 the twelve vehicles identified by Reyes was not consistent with OIS Data for like vehicles
7 inspected.

8 27. Reyes's review of The BAR-OIS data for the vehicles certified by Respondents
9 MS Auto and Tran during the above time period revealed a pattern of fraudulent smog inspections
10 that resulted in the issuance of fraudulent certificates of compliance. There were at least twelve
11 instances in which Respondent Tran certified vehicles that were not connected to the DAD during
12 the smog inspection. Therefore, Respondent Tran clean-plugged twelve vehicles, resulting in
13 Respondent MS Auto issuing twelve fraudulent Certificates of Compliance between
14 approximately February 22, 2017, and March 8, 2017. The details of each instance of clean-
15 plugging is as follows:

16 28. **Clean Plug Number 1:**

17 a. Reyes's review of the OIS test OBD Inspection List for MS Auto Repair indicated
18 that on February 22, 2017, Respondent Tran inspected a 2009 Ford F350 Super Duty Truck, VIN
19 1FTWW31R09EA80276, and Respondent MS Auto issued Smog Certificate of Compliance No.
20 ZP889405C. The OIS Test Data shows that during Tran's inspection, an eVIN was not
21 transmitted, the communication protocol was listed as I914, and the PID count was 19.
22 Comparative OIS Test Data for approximately 228 like 2009 Ford F350 Super Duty trucks show
23 that 98.7% of the time they transmit their eVIN, they transmit a communication protocol of
24 ICAN11bt5, and they transmit a PID count of 29 or 29/15¹.

25
26
27 ¹ Some vehicles will report two or more PID counts. In those instances, multiple
28 electronic control units are reporting their respective PID counts. In most cases the first number
reported is the PID count from the vehicle's OBD II Electronic Control Unit.

1 b. Furthermore, on February 10, 2017, the same 2009 Ford F350 Super Duty truck,
2 VIN 1FTWW31R09EA80276, failed a BAR-OIS inspection at another station. During that
3 inspection, the correct eVIN was reported, the communication protocol was through the designed
4 protocol of ICAN11bt5, and the expected PID count of 29/15 was transmitted.

5 29. **Clean Plug Number 2:**

6 a. Reyes's review of the OIS test OBD Inspection List for MS Auto Repair indicated
7 that on February 22, 2017, Respondent Tran inspected a 2006 Ford F150 Super Crew truck, VIN
8 1FTRW12W56KD37676, and Respondent MS Auto issued Smog Certificate of Compliance No.
9 ZP889410C. The OIS Test Data shows that during Tran's inspection, an eVIN was not
10 transmitted, the communication protocol was listed as I914, and the PID count was 19.
11 Comparative OIS Test Data for approximately 1,000 like 2006 Ford F150 Super Crew trucks
12 show that 98.8% of the time they transmit their eVIN, they transmit a communication protocol of
13 ICAN11bt5, and they transmit a PID count of 47.

14 b. Furthermore, on April 22, 2015, the same 2006 Ford F150 Super Crew truck, VIN
15 1FTRW12W56KD37676, passed a BAR-OIS Smog Check inspection at another facility. During
16 that inspection, the correct eVIN was reported, the communication was through the expected
17 protocol of ICAN11bt5, and the expected PID count of 47 was transmitted.

18 30. **Clean Plug Number 3:**

19 a. Reyes's review of the OIS test OBD Inspection List for MS Auto Repair indicated
20 that on February 23, 2017, Respondent Tran inspected a 2006 GMC Sierra K2500 Heavy Duty
21 truck, VIN 1GTHK23D46F151940, and Respondent MS Auto issued Smog Certificate of
22 Compliance No. ZP889429C. The OIS Test Data shows that during Tran's inspection, an eVIN
23 was not transmitted, the communication protocol was listed as I914, and the PID count was 19.
24 Comparative OIS Test Data for approximately 962 like 2006 GMC Sierra K2500 Heavy Duty
25 trucks show that 99% of the time they transmit the correct eVIN, they transmit a communication
26 protocol of ICAN11bt5, and they transmit a PID count of 26/9/3 or 28/9/3.

27 b. Furthermore, on April 23, 2015, the same 2006 GMC Sierra K2500 Heavy Duty
28 truck, VIN 1GTHK23D46F151940, passed a BAR-OIS inspection at another station. During that

1 inspection; the correct eVIN number of 1GTHK23D46F151940 was reported, the communication
2 was through the expected protocol of ICAN11bt5, and the expected PID count of 26/9/3 was
3 transmitted.

4 31. **Clean Plug Number 4:**

5 a. Reyes's review of the OIS test OBD Inspection List for MS Auto Repair indicated
6 that on February 24 2017, Respondent Tran inspected a 2004 Ford F150 truck, VIN
7 1FTPX14594NB87219, and Respondent MS Auto issued Smog Certificate of Compliance No.
8 ZP889439C. The OIS Test Data shows that during Tran's inspection, an eVIN was not reported,
9 the communication protocol was listed as I914, and the PID count was 19. Comparative OIS Test
10 Data for approximately 1000 like 2004 Ford F150 trucks show that 98.8% of the time they
11 transmit the correct eVIN, they transmit a communication protocol of ICAN11bt5, and they
12 transmit a PID count of 27.

13 b. Furthermore, on February 7, 2017, the same 2004 Ford F150 truck, VIN
14 1FTPX14594NB87219, failed a BAR-OIS inspection at another station. During that inspection,
15 the correct eVIN was reported, the communication was through the expected protocol of
16 ICAN11bt5, and the expected PID count of 27 was transmitted.

17 32. **Clean Plug Number 5:**

18 a. Reyes's review of the OIS test OBD Inspection List for MS Auto Repair indicated
19 that on February 24, 2017, Respondent Tran inspected a 2008 Chevrolet Tahoe C1500, VIN
20 1GNFC13098J207924, and Respondent MS Auto issued smog certificate of compliance No.
21 ZP889447C. The OIS Test Data shows that during Tran's inspection, an eVIN was not reported,
22 the communication protocol was listed as I914, and the PID count was 19. Comparative OIS Test
23 Data for approximately 1000 like 2008 Chevrolet Tahoe C1500 show that 99.6 % of the time they
24 transmit the correct eVIN, they transmit a communication protocol of ICAN11bt5, and they
25 transmit a PID count of 44/7/8.

26 b. Furthermore, on February 29, 2016, the same 2008 Chevrolet Tahoe C1500, VIN
27 1GNFC13098J207924, passed a BAR-OIS at another facility. During that inspection, the correct
28

1 eVIN was reported, the communication was through the expected protocol of ICAN11bt5, and the
2 expected PID count of 44/7/8 was reported.

3 **33. Clean Plug Number 6:**

4 a. Reyes's review of the OIS test OBD Inspection List for MS Auto Repair indicated
5 that on February 24, 2017, Respondent Tran inspected a 2008 Mercedes Benz CLK 350, VIN
6 WDBTJ56H88F239470, and Respondent MS Auto issued Smog Certificate of Compliance No
7 ZP889450C. The OIS Test Data shows that during Tran's inspection, an eVIN was not reported,
8 the communication protocol was listed as I914, and the PID count was 19. Comparative OIS Test
9 Data for approximately 967 like 2008 Mercedes Benz CLK 350, show that 99.8% of the time they
10 transmit the correct eVIN, they transmit a communication protocol of ICAN11bt5, and they
11 transmit a PID count of 44 or 44/12.

12 b. Furthermore, on January 2, 2017, the same 2008 Mercedes Benz CLK 350, VIN
13 WDBTJ56H88F239470, failed a BAR-OIS inspection at another facility. During that inspection,
14 the correct eVIN was reported, the communication was through the expected protocol of
15 ICAN11bt5, and the expected PID count of 44/12 was reported.

16 **34. Clean Plug Number 7:**

17 a. Reyes's review of the OIS test OBD Inspection List for MS Auto Repair indicated
18 that on February 28, 2017, Respondent Tran inspected a 2008 Honda Fit, VIN
19 JHMGD38438S050921 and Respondent MS Auto issued Smog Certificate of Compliance No.
20 QI024866C. The OIS Test Data shows that during Tran's inspection, an eVIN was not reported,
21 the communication protocol was listed as I914, and the PID count was 19. Comparative OIS Test
22 Data for approximately 1000 like 2008 Honda Fit cars show that 99.1% of the time they transmit
23 the correct eVIN, they transmit a communication protocol of ICAN29bt5, and they transmit a PID
24 count of 38.

25 b. Furthermore, on February 22, 2017, the same 2008 Honda Fit, VIN
26 JHMGD38438S050921, failed a BAR-OIS inspection at another facility. During that inspection,
27 the correct eVIN was reported, the communication was through the expected protocol of
28 ICAN29bt5, and the expected PID count of 38 was reported.

1 35. **Clean Plug Number 8:**

2 a. Reyes's review of the OIS test OBD Inspection List for MS Auto Repair indicated
3 that on March 2, 2017, Respondent Tran inspected a 2005 Chevrolet Tahoe C1500, VIN
4 1GNEC13V65R238259, and Respondent MS Auto issued Smog Certificate of Compliance No.
5 QI110222C. The OIS Test Data shows that during Tran's inspection, an eVIN was not reported,
6 the communication protocol was listed as I914, and the PID count was 19. Comparative OIS Test
7 Data for approximately 1000 like 2005 Chevrolet Tahoe C1500 trucks, show that 97.7% of the
8 time they transmit the correct eVIN, they transmit a communication protocol of JVPW, and they
9 transmit a PID count of 22.

10 b. Furthermore, on August 31, 2016, the same 2005 Chevrolet Tahoe C1500, VIN
11 1GNEC13V65R238259, failed a BAR-OIS inspection at another facility. During that inspection,
12 the correct eVIN was reported, the communication was through the expected protocol of JVPW,
13 and the expected PID count of 22 was reported.

14 36. **Clean Plug Number 9:**

15 a. Reyes's review of the OIS test OBD Inspection List for MS Auto Repair indicated
16 that on March 7, 2017, Respondent Tran inspected a 2001 Chevrolet Suburban K1500, VIN
17 3GNFK16T51G194301, and Respondent MS Auto issued Smog Certificate of Compliance No.
18 ZR153108C. The OIS Test Data shows that during Tran's inspection, an eVIN was not reported,
19 the communication protocol was listed as I914, and the PID count was 19. Comparative OIS Test
20 Data for approximately 1000 like 2001 Chevrolet Suburban K1500 vehicles, show that 97.1% of
21 the time they report the correct the eVIN, they transmit a communication protocol of JVPW, and
22 they transmit a PID count of 22.

23 b. Furthermore, on December 13, 2016, the same 2001 Chevrolet Suburban K1500,
24 VIN 3GNFK16T51G194301, failed a BAR-OIS inspection at another facility. During that
25 inspection, the correct eVIN was reported, the communication was through the expected protocol
26 of JVPW, and the expected PID count of 22 was reported.

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1 37. **Clean Plug Number 10:**

2 a. Reyes's review of the OIS test OBD Inspection List for MS Auto Repair indicated
3 that on March 7, 2017, Respondent Tran inspected a 2005 Ford Mustang GT, VIN
4 1ZVFT82H755129198, and Respondent MS Auto issued Smog Certificate of Compliance No.
5 ZR153113C. The OIS Test Data shows that during Tran's inspection, an eVIN was not reported,
6 the communication protocol was listed as I914, and the PID count was 19. Comparative OIS Test
7 Data for approximately 1000 like 2005 Ford Mustang GT, show that 95.2% of the time they
8 report the correct the eVIN, they transmit a communication protocol of ICAN11bt5, and they
9 transmit a PID count of 42 or 44.

10 b. Furthermore, on December 30, 2015, the same 2005 Ford Mustang GT, VIN
11 1ZVFT82H755129198, passed a BAR-OIS inspection at another facility. During that inspection,
12 the correct eVIN was reported, the communication was through the expected protocol of
13 ICAN11bt5, and the expected PID count of 44 was reported.

14 38. **Clean Plug Number 11:**

15 a. Reyes's review of the OIS test OBD Inspection List for MS Auto Repair indicated
16 that on March 7, 2017, Respondent Tran inspected a 2008 Mazda CX-9, VIN
17 JM3TB38V580139200, and Respondent MS Auto issued Smog Certificate of Compliance No.
18 ZR153121C. The OIS Test Data shows that during Tran's inspection, an eVIN was not reported,
19 the communication protocol was listed as I914, and the PID count was 19. Comparative OIS Test
20 Data for approximately 735 like 2008 Mazda CX-9, show that 99.9% of the time they report the
21 correct the eVIN, they transmit a communication protocol of ICAN11bt5, and they transmit a PID
22 count of 43/15.

23 b. Furthermore, on December 27, 2016, the same 2008 Mazda CX-9, VIN
24 JM3TB38V580139200, failed a BAR-OIS inspection at another facility. During that inspection,
25 the correct eVIN was reported, the communication was through the expected protocol of
26 ICAN11bt5, and the expected PID count of 43/15 was reported.

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39. **Clean Plug Number 12:**

a. Reyes's review of the OIS test OBD Inspection List for MS Auto Repair indicated that on March 8, 2017, Respondent Tran inspected a 2008 Chevrolet Silverado C1500, VIN 3GCEC13C38G230972, and Respondent MS Auto issued Smog Certificate of Compliance No. ZR153134C. The OIS Test Data shows that during Tran's inspection, an eVIN was not reported, the communication protocol was listed as I914, and the PID count was 19. Comparative OIS Test Data for approximately 1,000 like 2008 Chevrolet Silverado C1500 trucks, show that 98.9% of the time they report the correct the eVIN, they transmit a communication protocol of ICAN11bt5, and they transmit a PID count of 44/7/8.

b. Furthermore, on March 7, 2017, the same 2008 Chevrolet Silverado C1500, VIN 3GCEC13C38G230972, failed a BAR-OIS inspection at another facility. During that inspection, the correct eVIN was reported, the communication was through the expected protocol of ICAN11bt5, and the expected PID count of 44/7/8 was reported.

40. The relevant OIS Test Data analyzed by Reyes is summarized in Table I, below:

TABLE 1

Clean Plug	Cert. #	eVIN	Protocol	PID Count
1	ZP889405C			
	Passing Inspection 2/22/2017	None	I914	19
	2/10/2017-Failed Inspection	1FTWW31 R09EA80276	ICAN11bt5	29/15
	Expected Value	eVIN Reported	ICAN11bt5	29 or 29/15
Clean Plug	Cert. #	eVIN	Protocol	PID Count
2	ZP889410C			
	Passing Inspection 2/22/2017	None	I914	19
	4/22/2015-Passing inspection	1FTRW12W56KD37676	ICAN11bt5	47
	Expected Value	eVin Reported	ICAN11bt5	47
Clean Plug	Cert. #	eVIN	Protocol	PID Count
3	ZP889429C			
	Passing Inspection 2/23/2017	None	I914	19
	4/23/2015-Passing Inspection	1GTHK23D46F151940	ICAN11bt5	26/9/3
	Expected Value	eVin Reported	ICAN11bt5	26/9/3 or 28/9/3

1	Clean Plug 4	Cert. # ZP889439C	eVIN	Protocol	PID Count
2		Passing Inspection 2/24/2017	None	I914	19
3		2/7/2017-Failed Inspection	1FTPX14594NB87219	ICAN11bt5	27
4		Expected Value	eVIN Reported	ICAN11bt5	27
5	Clean Plug 5	Cert. #ZP889447C	eVIN	Protocol	PID Count
6		Passing Inspection 2/24/2017	None	I914	19
7		2/29/2016-Passing Inspection	1GNFC13098J207924	ICAN11bt5	44/7/8
8		Expected Value	eVIN Reported	ICAN11bt5	44/7/8
9	Clean Plug 6	Cert. # ZP889450C	eVIN	Protocol	PID Count
10		Passing Inspection 2/24/17	None	I914	19
11		1/2/2017-Failed Inspection	WDBTJ56H88F239470	ICAN11bt5	44/12
12		Expected Value	eVIN reported	ICAN11bt5	44 or 44/12
13	Clean Plug 7	Cert. # QI024866C	eVin	Protocol	PID Count
14		Passing Inspection 2/28/2017	None	I914	19
15		2/22/2017-Failed Inspection	JHMGD38438S050921	ICAN29bt5	38
16		Expected Value	eVIN Reported	ICAN29bt5	38
17	Clean Plug 8	Cert. # QI110222C	eVIN	Protocol	PID Count
18		Passing Inspection 3/2/2017	None	I914	19
19		8/31/2016-Failed Inspection	1GNEC13V65R238259	JVPW	22
20		Expected Value	eVin Reported	JVPW	22
21	Clean Plug 9	Cert. # ZR153108C	eVIN	Protocol	PID Count
22		Passing Inspection 3/7/2017	None	I914	19
23		12/13/2016-Failed Inspection	3GNFK16T51G194301	JVPW	22
24		Expected Value	eVIN Reported	I914	22
25	Clean Plug 10	Cert. # ZR153113C	eVIN	Protocol	PID Count
26		Passing Inspection 3/7/2017	None	I914	19
27		12/30/2015-Passed Inspection	1ZVFT82H755129198	ICAN11bt5	44
28					

	Expected Value	eVIN Reported	ICAN11bt5	42 or 44
Clean Plug 11	Cert. # ZR153121C	eVIN	Protocol	PID Count
	Passing Inspection 3/7/2017	None	I914	19
	12/27/2016-Failed Inspection	JM3TB38V580139200	ICAN11bt5	43/15
	Expected Value	eVIN Reported	ICAN11bt5	43/15
Clean Plug 12	Cert. # ZR153134C	eVIN	Protocol	PID Count
	Passing Inspection 3/8/2017	None	I914	19
	3/7/2017-Failed Inspection	3GCEC13C38G230972	ICAN11bt5	44/7/8
	Expected Value	eVIN Reported	ICAN11bt5	44/7/8

Respondent MS Auto:

FIRST CAUSE FOR DISCIPLINE

(Bus. & Prof Code, § 9884.7, subd. (a)(1))

(Making or Authorizing Untrue or Misleading Statements)

41. Respondent MS Auto has subjected its Automotive Repair Dealer Registration to disciplinary action in that Respondent MS Auto made untrue or misleading statements when it issued twelve fraudulent certificates of compliance and failed to comply with the Automotive Repair Act as set forth in paragraphs 23 through 40.

SECOND CAUSE FOR DISCIPLINE

(Bus. & Prof. Code, § 9884.7, subd. (a)(4))

(Fraud)

42. Respondent MS Auto has subjected its Automotive Repair Dealer Registration to disciplinary action in that Respondent MS Auto engaged in fraud when it issued twelve fraudulent certificates of compliance as set forth in paragraphs 23 through 40. (Bus. & Prof. Code, section 9884.7, subd, (a)(4).)

THIRD CAUSE FOR DISCIPLINE

(Bus. & Prof Code, § 9884.7, subd. (a)(6); Health & Saf. Code, § 44072.2, subds. (a) & (c))

(Failure to Comply with the Automotive Repair Act)

43. Respondent MS Auto has subjected its Automotive Repair Dealer Registration and Smog Station License to disciplinary action in that it failed to comply with the Automotive Repair

1 Act, sections of the Code, and applicable regulations as set forth in paragraphs 23 through 40.
2 (Bus. & Prof Code, § 9884.7, subd. (a)(6); Health & Saf. Code, § 44072.2.) The violations are as
3 follows:

4 a. **Health & Safety Code, § 44012, subd. (f):** Respondent MS Auto failed to follow
5 test procedures in accordance with the Onboard Inspection System ("OIS") specifications when it
6 failed to properly conduct the functional portion of the smog inspection by failing to connect
7 twelve vehicles to the BAR-OIS when they were being certified.

8 b. **Health & Safety Code, § 44015, subd. (b):** Respondent MS Auto certified
9 prohibited vehicles when it issued certificates to twelve vehicles that were not connected to the
10 BAR-OIS when they were being certified.

11 c. **Health & Safety Code, § 44059, subd. (b):** Respondent MS Auto committed
12 perjury when it failed to properly conduct the functional portion of the smog inspection by failing
13 to connect twelve vehicles to the BAR-OIS when they were being certified.

14 d. **Cal. Code Regs., tit. 16, § 3340.35, subd. (c):** Respondent MS Auto issued
15 certificates of compliance to twelve vehicles that were not properly inspected in accordance with
16 California Code of Regulations, title 16, section 3340.42.

17 e. **Cal. Code Regs., tit. 16, § 3340.42, subd. (b)(2):** Respondent MS Auto failed to
18 conduct the functional inspection on twelve vehicles in accordance with the smog check manual
19 referenced in California Code of Regulations, title 16, section 3340.45.

20 f. **Cal. Code Regs., tit. 16, § 3373:** Respondent MS Auto issued false or misleading
21 records when it issued twelve fraudulent certificates of compliance.

22 **FOURTH CAUSE FOR DISCIPLINE**
23 **(Dishonesty, Fraud, or Deceit)**
24 **(Health & Saf. Code, § 44072.2, subd. (d))**

25 44. Respondent MS Auto has subjected its Smog Station License to discipline in that it
26 committed acts involving dishonesty, fraud or deceit, whereby another was injured, by issuing
27 twelve fraudulent certificates of compliance as set forth in paragraphs 23 through 40, above.
(Health & Saf. Code, § 44072.2, subd. (d).)

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1 **Respondent Tran:**

2 **FIFTH CAUSE FOR DISCIPLINE**
3 **(Violation of Motor Vehicle Inspection Program)**
4 **(Health & Saf. Code, § 44072.2, subds. (a) & (c))**

5 45. Respondent Tran has subjected his Smog Check Inspector License to discipline in that
6 he failed to comply with the Automotive Repair Act, sections of the Code, and applicable
7 regulations as set forth in paragraphs 23 through 40. (subd. (a)(6); Health & Saf. Code, §
8 44072.2.) The violations are as follows:

9 a. **Health & Safety Code, § 44012, subd. (f):** Respondent Tran failed to follow test
10 procedures in accordance with the OIS specifications when he failed to properly conduct the
11 functional portion of the smog inspection by failing to connect twelve vehicles to the BAR-OIS
12 when they were being certified.

13 b. **Health & Safety Code, § 44032:** Respondent Tran failed to follow test procedures in
14 accordance with the OIS specifications when he failed to properly conduct the functional portion
15 of the smog inspection by failing to connect twelve vehicles to the BAR-OIS when they were
16 being certified in accordance with Health and Safety Code, section 44012.

17 c. **Health & Safety Code, § 44059, subd. (b):** Respondent Tran committed perjury
18 when he failed to properly conduct the functional portion of the smog inspection by failing to
19 connect twelve vehicles to the BAR-OIS when they were being certified.

20 d. **Cal. Code Regs., tit. 16, § 3340.30, subd. (a):** Respondent Tran failed to inspect or
21 test vehicles in accordance with Health and Safety Code sections 3340.42, 44012, and 44035
22 when he failed to properly conduct the functional portion of the smog inspection by failing to
23 connect twelve vehicles to the BAR-OIS when they were being certified.

24 e. **Cal. Code Regs., tit. 16, § 3340.41, subd. (c):** Respondent Tran entered in false
25 information about vehicles being tested when he failed to properly conduct the functional portion
26 of the smog inspection by failing to connect twelve vehicles to the BAR-OIS when they were
27 being certified.

1 f. Cal. Code Regs., tit. 16, § 3340.42, subd. (b)(2): Respondent Tran failed to conduct
2 functional inspections on twelve vehicles in accordance with the smog check manual referenced
3 in California Code of Regulations, title 16, section 3340.45.

4 g. Cal. Code Regs., tit. 16, § 3340.45, subd. (b)(2): Respondent Tran failed to inspect
5 vehicles in accordance with the Smog Check Manual requirements and procedures when he failed
6 to properly conduct the functional portion of the smog inspection by failing to connect twelve
7 vehicles to the BAR-OIS when they were being certified.

8 **SIXTH CAUSE FOR DISCIPLINE**
9 **(Fraud)**
10 **(Health & Saf. Code, § 44072.2, subd. (d))**

11 46. Respondent Tran has subjected his Smog Check Inspector's license to discipline in
12 that he committed acts involving dishonesty, fraud, or deceit, whereby another was injured, when
13 he caused twelve fraudulent certificates of compliance to be issued as set forth in paragraphs 23
14 through 40, above. (Health & Saf. Code, § 44072.2, subd. (d).)

15 **OTHER MATTERS**

16 47. Pursuant to Code section 9884.7, subdivision (c), the Director may suspend, revoke,
17 or place on probation the registration for all places of business operated in this state by
18 Respondent MS Auto Repair, upon a finding that Respondent MS Auto Repair has, or is, engaged
19 in a course of repeated and willful violations of the laws and regulations pertaining to an
20 automotive repair dealer.

21 48. Pursuant to Health & Safety Code section 44072.8, if Respondent MS Auto Repair's
22 Station License is revoked or suspended, any additional license issued under Chapter 5 of Part 5
23 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise
24 revoked or suspended by the director.

25 49. Pursuant to Health & Safety Code section 44072.8, if Respondent Tran's Smog Check
26 Inspector License is revoked or suspended, any additional license issued under Chapter 5 of Part 5
27 of Division 26 of the Health and Safety Code in the name of said licensee may be likewise
28 revoked or suspended by the director.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters alleged in this Accusation, and that following the hearing, the Director of Consumer Affairs issue a decision:

1. Revoking or suspending Automotive Repair Dealer Registration Number ARD 223079, issued to Mohammed Sahid, owner of MS Auto Repair;
2. Revoking or suspending any other ARD registration issued to Mohammed Sahid;
3. Revoking or suspending Smog Check Test and Repair Station License Number RC 223079, issued to Mohammed Sahid, owner of MS Auto Repair;
4. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Mohammed Sahid;
5. Revoking or suspending Smog Check Inspector License Number EO 636650, issued to Andy Phong Tran;
6. Revoking or suspending any additional license issued under Chapter 5 of Part 5 of Division 26 of the Health and Safety Code in the name of Andy Phong Tran;
7. Ordering Mohammed Sahid and Andy Phong Tran to pay the Bureau of Automotive Repair the reasonable costs of the investigation and enforcement of this case, pursuant to Business and Professions Code section 125.3; and
8. Taking such other and further action as deemed necessary and proper.

DATED: April 23, 2018



PATRICK DORAIS
Chief
Bureau of Automotive Repair
Department of Consumer Affairs
State of California
Complainant

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